COURT OF APPEALS OF WISCONSIN

DISTRICT IV

AETNA LIFE INSURANCE CO., et al.,

Plaintiffs-Respondents,

vs.

SUSAN M. MITCHELL, COMMISSIONER
OF INSURANCE and OFFICE OF
COMMISSIONER OF INSURANCE,

Defendants-Appellants.

Appeal from the Circuit Court for Dane County

The Honorable W. L. Jackman, Presiding

AMICUS CURIAE BRIEF OF AMERICAN COUNCIL OF LIFE INSURANCE

Case No. 80-518

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES:

STATUTES:

14

14

15

16

17

6,10

6,10,12,14,
15,17,19,20

20

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INTRODUCTION

The American Council of Life Insurance ("ACLI"), as amicus curiae, respectfully submits this Brief to urge this Court to affirm the Judgment of the trial court, which declared Rule INS. 2.14(4)(a) invalid and void as applied to whole life insurance policies.

INTERESTS OF THE AMERICAN COUNCIL OF LIFE INSURANCE

The ACLI is a trade association representing 507 life insurance companies, of which 273 are licensed to sell life insurance policies in the State of Wisconsin. Life insurance companies that are members of ACLI write 95% of all life insurance in force in the United States, and 95.2%

of all life insurance in force in Wisconsin. Membership of the ACLI is very diversified, consisting of large, medium and small stock and mutual life insurance companies. ACLI members write participating and nonparticipating life insurance policies. Policies sold by ACLI members are designed in various ways to meet the needs of differing segments of the marketplace; e.g., some policies are designed as high cash value/high premium policies to satisfy one segment of the public while other policies are low premium/low cash value policies to satisfy another segment of the public, and other policies have no cash values, i.e., term policies. Because of the diversity of its members and of the types of policies written by its members, and because of its mandate to advance the common interests of the life insurance industry, ACLI strives to maintain a competitive balance so that no one segment of the industry is favored over another.

ARGUMENT

I. ACLI And Its Members Support Effective Cost Disclosure.

For many years, the ACLI, or its predecessor organizations, have participated in the development of effective cost disclosure regulations. Several ACLI committees have studied and continue to study in depth various

aspects of cost disclosure. The National Association of Insurance Commissioners ("NAIC") began its study of cost disclosure in November, 1971. The ACLI and its members have worked with committees and task forces of the NAIC in that organization's efforts to develop a fair and accurate system of cost disclosure. After over four years of effort, the NAIC approved a final draft of the Life Insurance Solicitation Model Regulation ("Model Regulation"). The Model Regulation was received as Exhibit 35 in the Court below.

The ACLI has aggressively worked to secure the adoption of effective cost disclosure regulations by insurance regulators throughout the United States. The ACLI has testified on the subject of cost disclosure at hearings before numerous state agencies, including Wisconsin's Insurance Department on June 27, 1978 and April 16, 1979 (see Exhibits 99-100). Without exception, that testimony has been in favor of accurate, fair and meaningful cost disclosure at the state level, and furthermore, that testimony has called for adoption of regulations sooner rather than later. Moreover, the ACLI has vigorously opposed suggestions for misleading and confusing methods of cost disclosure. Due in part to the work of the ACLI and its member companies, the Model Regulation has now been adopted

in 30 states.[1/]

One of the primary objectives of the ACLI is to assure that the competitive free market for the sale of life insurance policies to the consuming public be preserved and improved. To that end, the ACLI supports effective cost disclosure that enables consumers to compare the cost of competing life insurance policies. Very simply, the ACLI is an organization of competitors. Its members recognize the benefits to the industry and the consuming public of a free market economy. The proper functioning of a free market economy demands that complete and accurate cost information

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1/ Alabama, Ala. Ins. Dept. Reg. No. 64; Arizona, Ariz. Ins. Depart. R. 4-14-211; Connecticut, Regs. of Conn. State Agencies, sec. 38-64-32, et. seq.; Delaware, Del. Ins. Dept. Reg. No. 29; Florida, Fla. Stat. Ann. sec. 626.990 (West); Georgia, Rules of Comptroller General, Ins. Dept., Ch. 120-2-31, et seq.; Illinois, Ill. Ins. Dept. R. 9.30; Indiana, 760 I.A.C. 1-24-1, et seq.; Iowa, I.A.C. Ch. 510-15.66 (507B), et seq.; Maryland, Md. Ins. Dept. Reg. No. 217-2; Massachusetts, 211 C.M.R. 31.00; Missouri, Mo. Ann. Stat. sec. 376.700, et seq. (Vernon); Montana, A.R.M. 6.6.201, et seq.; Nebraska, Neb. Ins. Dept. Rule 33; Nevada, Nev. Ins. Dept. Reg. LH-6; New Hampshire, N.H. Ins. Dept. Reg. No. 21; New Jersey, N.J.A.C. 11:4-11.1, et seq.; New Mexico, N.M. Ins. Rule 80-3; North Carolina, N.C. Gen. Stat. sec. 58-213.6, et seq.; North Dakota, N.D. Ins. Dept. R. 45-03-01-01, et seq.; Ohio, O.A.R. 3901-1-33; Oregon, O.A.R. 836-51-005, et. seq.; Rhode Island, R.I. Ins. Dept. Reg. XXVII; South Carolina, S.C. Ins. Dept. Rule 69-30; South Dakota, A.R.S.D. 20:06:14; Tennessee, Rules of Tenn. Dept. of Ins. Ch. 0780-1-40; Utah, Utah Ins. Dept. Reg. 781; Vermont, Vt. Adm. Rev. Reg. 77-2; Washington, W.A.C. 284-23-200, et seq.; West Virginia, W.Va. Adm. Reg., Ins. Com., Ch. 33-2, series XII-1978.

be furnished to the consumer.

The support of the ACLI and its member companies for effective cost disclosure is important for two reasons. First, it demonstrates that the insurance industry vigorously supports regulations requiring effective cost disclosure, contrary to the allegation on p. 13 of Appellants' Reply Brief that "[t]his litigation has dashed any expectation that an industry . . . would welcome meaningful cost disclosure." Second, such support has been important in bringing effective, meaningful cost disclosure to the American public, as evidenced by the fact that the Model Regulation system of cost disclosure is being used in over 80% of the sales made today, contrary to the further allegation on p. 13 of Appellants' Reply Brief that "[c]onsumers have been deprived of meaningful information long enough."

Finally, the support of regulators or legislators in 30 states for the NAIC system of cost disclosure demonstrates their collective judgment that such a system is fair, meaningful and accurate, and that the public is capable of understanding the various cost disclosure indices.

II. There Are Certain Minimum Standards Any Cost Disclosure System Must Meet and Rule INS. 2.14(4)(a) Fails to Meet Such Standards.

There are certain minimum standards that any system of cost disclosure must meet. First, it must not contain false and misleading information, nor must the information it gives be misleading because it is incomplete. Not only common sense dictates this standard, but also §628.34(1)(a), Wis. Stats., which provides in part as follows:

> "No person who is or should be licensed under this Code . . . may make or cause to be made any communication relating to an insurance contract, the insurance business, any insurer or any intermediary which contains false or misleading information, including information misleading because of incompleteness."

Second, the system of cost disclosure should not restrict competition among life insurance companies.

The Model Regulation is an example of a cost disclosure regulation that meets these fundamental criteria. It does so simply because it recognizes the most fundamental concepts concerning the cost of a life insurance policy:

(1) The cost of a life insurance policy cannot be determined by premium alone, but must also take into account cash values and dividends.

(2) If a policy is surrendered prior to death of

the insured, the policyholder will receive the cash values; but if the policy is held until death, only death benefits will be paid.

(3) The cost of protection will differ depending on when the policy terminates, and whether it terminates by death or surrender.

(4) The dividends illustrated on a participating policy when it is sold are illustrations only and cannot be guaranteed.

In recognition of these fundamental principles, the Model Regulation requires disclosure of both the Surrender Cost Index ("SCI"), which provides the purchaser with information relating to the cost of a policy if it is surrendered at some future time, and the Net Payment Cost Index ("NPCI"), which provides information relating to the cost of a policy if it is not surrendered but rather kept in force for a period of time, e.g., until the death of the insured. Also required is the Equivalent Level Annual Dividend ("ELAD"). ELAD is a calculation applicable to SCI and NPCI to enable the consumer to determine what part of each index arises from illustrated dividends which may differ from those actually paid. The SCI, NPCI, and ELAD

are shown for both 10 and 20 year periods in recognition of the fact that the cost will differ depending upon when the policy is terminated.

The Commissioner has adopted an interest adjusted index system of cost disclosure, which system is the foundation for the Model Regulation. The essential parts of the system are an index displaying the surrender cost, SCI, an index displaying the cost of policies held until death, NPCI, and ELAD, which reveals the extent to which both indexes are composed of nonguaranteed dividends. The Commissioner has adopted the Model Regulation in part, but omitted essential parts which were designed to offer full disclosure to the consumer.

The ACLI recognizes that the Commissioner is entitled to adopt a cost disclosure system which differs from the Model Regulation so long as it is within her statutory authority. However, having chosen to use the interest adjusted index system of cost disclosure as a basis, the Commissioner cannot omit the key elements of NPCI and ELAD. To do so would prevent the consumer from being able to make a purchase decision with the benefit of complete, non-misleading cost information. This, in turn, directly

affects the ability of the ACLI members to compete with each other on the basis of the entire cost picture of a policy rather than just the one segment the regulator deems to be most important "to the majority" of purchasers.

The Buyer's Guide and "Preliminary Policy Summary" ("Summary"), as adopted by the Commissioner, contain material omissions. First, the Buyer's Guide and Summary imply that SCI and NPCI are substantially similar, and the Summary therefore omits NPCI. This implied similarity is not the case because NPCI and SCI contain different components and are used for different purposes. SCI is the most appropriate index for the consumer to use in comparing the cost of the insurance policy should it be ultimately surrendered. It considers the cash value upon surrender. This cash surrender value is irrelevant to the policyholder upon death of the insured. Since many policyholders purchase and hold insurance policies until death and many more purchase such policies with this intent, advising the consumer to utilize SCI alone for price comparison is misleading. NPCI is the most appropriate index for the consumer to use in comparing the cost of the policy it if is kept in force until death.

Second, the failure to include ELAD also results

in incomplete and misleading disclosure. ELAD discloses the presence of nonguaranteed dividends in the cost structure of insurance policies, an essential item of information for the consumer. The use of ELAD or its equivalent is particularly important in the marketplace today as companies develop new products with nonguaranteed premium rates and with other nonguaranteed cost elements. Failure to disclose the magnitude of these important nonguaranteed elements of a life insurance policy can clearly mislead the purchaser.

The trial court found that Rule INS. 2.14(4)(a), requiring delivery to consumers of a Summary and a Buyer's Guide, compelled delivery of false and misleading information to the consumer, contrary to §628.34(1)(a), Wis. Stats. The decision of the trial court should be affirmed.

The Buyer's Guide and Summary also do not meet the second fundamental criteria of any cost disclosure system in that they do restrict competition by dictating the use of the SCI alone as a yardstick for market selection. This can discriminate in favor of participating policies over non-participating policies, because the consumer is not informed of the extent to which the SCI is based upon nonguaranteed dividends. Consumers have a right to know that SCI contains

this element and to what extent, and be given the choice of whether or not to accept that risk. SCI alone favors policies with high cash surrender values over those which have lower cash surrender values. Cash surrender value is less important to the consumer who desires to compare life insurance policies with the objective of keeping the insurance in force. Finally, use of Buyer's Guide and Summary could cause low cash value and low guaranteed premium policies to be driven from the marketplace, even though such policies may be cost competitive within the objectives of consumers. Individual companies will not be placed at an unfair competitive disadvantage if a full and accurate disclosure of the cost of insurance policies is given to the consumer.

Moreover, competition is further restricted by any system which discourages innovation, i.e., the design of new products for the marketplace. The Buyer's Guide and Summary, by emphasizing the SCI and thereby giving it undue prominence, will force companies to concentrate on designing and marketing products that produce favorable results when compared using only SCI. Correspondingly, there would be considerably less incentive for companies to develop lower

cost products containing reduced cash surrender values, since such products typically produce higher SCI. Such innovation is vital to the marketplace and essential to competition.

III. Rule INS. 2.14(4)(a) Exceeds The Commissioner's Authority to Promulgate Rules Because it Contradicts the Purposes Set Out in the Wisconsin Insurance Code.

Section 601.41(3), Wis. Stats., states that "[t]he commissioner shall have rule-making authority under s. 227.014(2)." Section 227.014(2)(a), Wis. Stats., provides:

> "Each agency is authorized to adopt such rules interpreting the provisions of statutes enforced or administered by it as it considers to be necessary to effectuate the purpose of the statutes, but such rules are not valid if they exceed the bounds of correct interpretation." (Emphasis added.)

Moreover, it is a well-settled principle of law in Wisconsin that:

> "The rule-making power does not extend beyond the power to carry into effect the purpose as expressed in the enactment of the legislature. 'A rule out of harmony with the statute is a mere nullity.' (citations omitted)."

Basic Products Corp. v. Department of Taxation, 19 Wis.2d 183, 186, 120 N.W.2d 161 (1963). See also, State ex rel.

Baranowski v. Koszewski, 251 Wis. 383, 386-7, 29 N.W.2d 764 (1947); Josam Mfg. Co. v. State Board of Health, 26 Wis.2d 587, 601, 133 N.W.2d 301 (1965); Mid-Plains Telephone, Inc. v. Public Service Commission, 56 Wis.2d 780, 202 N.W.2d 907 (1973).

The purposes of the Insurance Code are set forth in §601.01(3), Wis. Stats., which provides in part as follows:

> "601.01(3) Purposes. The purposes of [chs. 600 to 646] shall be:
>
> * * * *
>
> (b) To ensure that policyholders, claimants and insurers are treated fairly and equitably;
>
> (c) To ensure that the state has an adequate and healthy insurance market, characterized by competitive conditions and the exercise of initiative;
>
> * * * *
>
> (g) To maintain freedom of contract and freedom of enterprise so far as consistent with the other purposes of the law;
>
> * * * *
>
> (j) To keep the public informed on insurance matters; and
>
> (k) To achieve the other purposes stated in the insurance code."

Chap. 628, Wis. Stats., regulates marketing of insurance policies. Its purposes are set forth in §628.01, Wis. Stats., which provides as follows:

> "628.01 Purposes. The purposes of this chapter are:
>
> (1) To encourage improvement in the professional competence of insurance intermediaries;
>
> (2) To provide maximum freedom of marketing methods for insurance, consistent with the interests of the public in this state;
>
> (3) To preserve and encourage competition at the consumer level;
>
> (4) To limit the adverse effects of imperfect competition on the cost of insurance; and
>
> (5) To regulate insurance marketing practices in conformity with the general pruposes of the insurance code."

Rule INS. 2.14(4)(a) is totally "out of harmony" with the Wisconsin Insurance Code. For example, §601.01(3)(b), Wis. Stats., provides that a purpose of the Insurance Code shall be "to ensure that policyholders, claimants, and insurers are treated fairly and equitably." A comparison of policies based solely upon SCI discriminates against certain companies writing nonparticipating policies in that their policies may involve higher SCI numbers than those companies

which write only participating policies. Also, the failure to include ELAD discriminates against companies which contract to furnish guaranteed cost policies when compared with those which issue participating policies. Finally, many companies operate in markets where there is a particular need for products with low premiums and low cash values. Consumers with limited financial needs, for example, are attracted to such products as a means for maximizing their insurance protection within their budgetary constraints. These products usually will produce relatively high SCIs but low NPCIs, so companies that sell extensively to such consumers would be placed at an unfair competitive disadvantage. These companies would be unfairly characterized as high-cost companies simply because their typical customer is interested in a product with a low NPCI but with a high SCI.

As another example, §628.01(2), Wis. Stats., states that the purpose of the chapter on insurance marketing is "[t]o ensure that the state has an adequate and healthy insurance market, characterized by competitive conditions and the exercise of initiative." Rule INS. 2.14(4)(a) contradicts these purposes in that it in fact minimizes

freedom of marketing methods and impedes an adequate and healthy insurance market contrary to the interests of the public because, by requiring disclosure of the SCI only, it will force companies through competitive necessity to structure their policies to yield as low a SCI as possible. A policy's SCI can be lowered by raising the cash values. This in turn, however, raises the premiums and means that the consumer will be able to buy less whole life death protection per premium dollar. This is not in the best interests of a consumer whose objective is to purchase whole life insurance with a limited amount of cash, and it restricts competition.

As yet another example, §628.01(3), Wis. Stats., states as a purpose that the chapter seeks "[T]o preserve and encourage competition at the consumer level." Rule INS. 2.14(4)(a) contradicts this purpose in that it in fact discourages competition at the consumer level because consumers are given only enough information, i.e., the SCI, to compare one aspect of the cost of a life insurance policy. They do not have the tool, i.e., the NPCI, to compare the cost of competing policies in the event the policy is kept in force and thus do not have the complete

information that is necessary if competitive forces are to operate effectively. As the record demonstrates, rankings based upon the SCI and those based upon the NPCI will often not correspond and therefore both of these indices need to be disclosed.

In addition, even SCI comparisons involving only participating policies will be distorted. The consumer has no way of knowing the extent to which the cost indices are guaranteed, and thus another element is missing that is necessary to preserve competition at the consumer level. This is particularly important given the fluctuations in interest rates the economy has been experiencing during the past year and the uncertainty of what the economic future holds.

As another example, §628.01(4), Wis. Stats., states that a purpose is "[T]o limit the adverse effects of imperfect competition on the cost of insurance." Rule INS. 2.14(4)(a) in fact accentuates the adverse effects of imperfect competition by favoring one type of product over another and thereby limiting competition. This is further aggravated by the Commissioner's rule which enables an agent selling a high premium/high cash value policy with a low SCI

to rely on the endorsement by the Insurance Commissioner of the SCI alone as a measure of cost. As James L. Brown of the Wisconsin Consumers League said (Ex. 99, pp. 9-10):

> "The agent who can offer the Guide and Policy Summary to a prospective customer can, in effect, say to that customer, 'Look, you don't have to take my word alone that this policy is a good buy for you. Look at how the Wisconsin Commissioner of Insurance rates this policy.'"

In fact, the policy with the lower SCI number may have a higher NPCI than the policy with which it is being compared. By whom will the consumer be more likely to be convinced - the agent selling a policy with the low SCI number with the help of the Commissioner's endorsement or the agent trying to convince the consumer that the NPCI is important to consider, even though the Commissioner did not think it necessary to require disclosure of the NPCI?

Lastly, §601.01(3)(j), Wis. Stats., states that one of the purposes of the Insurance Code is "[t]o keep the public informed on insurance matters." This is contradicted by Rule INS. 2.14(4)(a), which misinforms the public on some aspects of cost comparison and omits to inform the public on others. Complete and accurate information on cost comparison,

as heretofore described, is in the spirit of the purpose of the Code and is in keeping with the objectives of the ACLI.

The fundamental concept underlying the purposes of the insurance code is that a well-informed consumer is necessary for a free-market economy to function properly. By being supplied with sufficient and accurate information, the consumer is well-informed. The Summary and Buyer's Guide fail to supply the consumer with such information, and therefore he or she is not properly informed for the purpose of making the appropriate purchase decision. This, in turn, restricts the operation of a free-market economy, contrary to the interests of the ACLI and to the purpose of the Insurance Code.

The trial court correctly concluded that Rule INS. 2.14(4)(a) violates the purposes of the Insurance Code, which require fair treatment, free competition, and an open marketplace.

IV. Courts Have Required Adherence to Strict Standards of Disclosure in Other Areas and Rule INS. 2.14(4)(a) Should Be No Exception.

There are other consumer disclosure statutes which provide guidance as to what may be misleading. Issuers of securities are required to disclose facts to investors which

would be important in making the decision to invest. Escott v. Bar Chris Construction Corp., 283 F.Supp. 643, 681 (S.D.N.Y. 1968); TSC Industries, Inc. v. Northway, Inc., 426 U.S. 438, 444-450 (1976), and cases cited therein. Compare Restatement of Torts 2d, §402B, Comment g (Misrepresentation by Seller of Chattels to Consumer). See also, Weaver v. General Insurance Corp., 528 F.2d 589 (5th Cir. 1976), construing the Truth In Lending Act and regulations to require a lender to disclose the finance charges applicable to the purchase of credit life insurance. These cases illustrate by analogy that purchasers of insurance policies should not be subjected to the incomplete and misleading disclosures required by the Commissioner's Regulation. A purchaser of a life insurance policy should not be directed to consider SCI alone, which emphasizes surrender of the policy, when his or her objective is to compare the policy as if it were kept in force until death. Nor should he or she be referred to SCI and not be told of nonguaranteed dividends affecting the SCI. Indeed, an issuer of securities, a seller of chattels, or a lender making an incomplete and misleading disclosure similar to that required by Rule INS. 2.14(4)(a) would have a substantial problem complying with applicable disclosure regulations

and common law standards requiring full disclosure in the marketplace.

Recently, the Wisconsin Supreme Court construed a consumer disclosure statute to prevent deception to the consumer. In State v. Amoco Oil Co., 97 Wis.2d 226, 236-37, 293 N.W.2d 487 (1980), the court considered §100.18(2), Wis. Stats., which requires that the amount to be paid in a "combination sale" be set forth clearly. Amoco published advertisements describing "free" items and stating that the prices to be posted by participating dealers could vary. This case stands for the proposition that complete disclosure means disclosure of all elements of price in one place, analogous to ACLI's argument to include NPCI and ELAD in the Summary. The court stated:

> "Amoco's construction of sec. 100.18(2) to validate its advertisements standing alone or its advertisements in combination with the dealer's point-of-sale displays not only does violence to the language of the statute but also undermines the purpose of the statute. Sec. 100.18(2) does not provide that multiple advertisements read together can supply the price or amount to be paid. The statute requires that the price be stated 'in advertising' and that 'the price or amount which must be paid shall be set forth clearly, conspicuously and in such manner that the total price or amount to be paid may be readily ascertained.' We read this language to mean

that the actual prices must be readily available to the consumer in the advertisement which offers the combination sale. If we were to accept Amoco's contention that the requirements of sec. 100.18(2) are met by integrating Amoco's advertisements with point-of-sale displays, the legislative purpose in enacting sec. 100.18(2) would be defeated.

It is apparent that the purpose of sec. 100.18(2), Stats., is to promote full disclosure to the consumer of reliable data, thereby preventing deceptive pricing and facilitating price comparison. . .

. . .

The theory of sec. 100.18(2) is that the consumer, supplied with sufficient and accurate information, can evaluate the advertisement and make an intelligent, rational decision and that the advertiser should supply the information, the consumer should not have to search for it. Sec. 100.18(2), Stats., enables the consumer to gauge from the advertisement itself whether the 'gift' is 'free' or whether the consumer is financing the 'gift' in whole or in part by paying a high price for the merchandise to be purchased. Sec. 100.18(2) enables the consumer to determine the price of the merchandise before he or she is enticed into the business premises of the seller by the advertisement of 'free' goods. If the consumer must go to the business premises of the dealer for the prices, the consumer is put in a position in which the retailer may exert pressure, the consumer may feel compelled to make an immediate decision, and the consumer cannot reflect or make comparisons. Ohralik v. Ohio Bar Assn., 436 U.S. 447, 457 (1978)."

The argument that accurate and complete disclosure, e.g., SCI, NPCI and ELAD, would be "too complicated for the consumer" is without merit. Disclosure systems more complex than the Model Regulation have proven effective in other areas such as in the credit and securities industries. There is no reason why such would not be equally effective in the insurance industry, as evidenced by the adoption of the Model Regulation in 30 states.

Over the past several years, courts, legislatures, and regulatory agencies have required businesses to provide full and fair disclosure in the market. Such disclosures, for the most part, have not been found to be unduly complicated for the customer. The theory of disclosure is to protect consumers and to insure full and fair competition in the marketplace.

Administrators of disclosure legislation and rules have a legal duty and responsibility not to adopt disclosure regulations which are incomplete and misleading to the consumer. It is indeed unfortunate that the Commissioner of Insurance has adopted a regulation that misleads the consumer, restricts competition, and imposes regulatory mandates

contrary to the public interest.

CONCLUSION

The judgment of the trial court shoul

Respectfully subm

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STATE OF WISCONSIN

SUPREME COURT

Case Number 80-518

AETNA LIFE INSURANCE CO., ALLSTATE LIFE INSURANCE CO., BUSINESS MEN'S ASSURANCE COMPANY OF AMERICA, CONNECTICUT GENERAL LIFE INSURANCE CO., HARTFORD LIFE INSURANCE CO., IDS LIFE INSURANCE CO., MONTGOMERY WARD LIFE INSURANCE CO., OCCIDENTAL LIFE INSURANCE CO. OF CALIFORNIA, PHILADELPHIA LIFE INSURANCE CO., PROVIDENT LIFE AND ACCIDENT INSURANCE CO., ROCKFORD LIFE INSURANCE CO., THE PAUL REVERE LIFE INSURANCE CO., THE TRAVELERS INSURANCE CO., WASHINGTON NATIONAL INSURANCE CO., JOHN U. ANDERSEN, STUART B. CRAWFORD, WILLIAM R. LUND, JOSEPH MANNIX, PATRICK J. O'DONAHUE, JAMES J. RATH, KEITH TRIPP, THE NATIONAL ASSOCIATION OF LIFE UNDERWRITERS AND WISCONSIN ASSOCIATION OF LIFE UNDERWRITERS,

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v.

SUSAN M. MITCHELL, Commissioner of Insurance, and OFFICE OF THE COMMISSIONER OF INSURANCE,

Defendants-Appellants.

BRIEF OF THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS AS AMICUS CURIAE

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